

Message Text

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PAGE 01 STATE 084726

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TO AMEMBASSY ATHENS PRIORITY

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TAGS:AINF, OGEN

SUBJECT: AUTOMATED PERSONNEL SYSTEM

REF: ATHENS 2279

1. THE DECISION AS TO WHETHER TO CONTRACT FOR THE OPERATION OF A SYSTEM OF RECORDS OR TO PERFORM THE OPERATION "IN-HOUSE" WAS NOT INTENDED TO BE ALTERED BY THE PRIVACY ACT.

2. THE OMB GUIDELINES PROVIDE VERY LITTLE GUIDANCE ON ACCESS BY CONTRACTORS TO PERSONAL INFORMATION. SUB-SECTION (M) OF THE ACT, CONCERNING GOVERNMENT CONTRACTORS, ADDRESSES ITSELF SOLELY TO THE SITUATION WHERE A CONTRACTOR IS HIRED TO OPERATE FOR THE AGENCY AN ENTIRE SYSTEMS OF RECORDS: "WHEN AN AGENCY PROVIDES BY A CONTRACT FOR THE OPERATION BY OR ON BEHALF OF THE AGENCY OF A SYSTEM OF RECORDS TO ACCOMPLISH AN AGENCY FUNCTION, THE AGENCY SHALL, CONSISTENT WITH ITS AUTHORITY, CAUSE THE REQUIREMENTS OF THIS SECTION TO BE APPLIED TO SUCH SYSTEM. FOR PURPOSES OF SUBSECTION (I) OF THIS SECTION ANY SUCH CONTRACTOR AND ANY EMPLOYEE OF SUCH CONTRACTOR, IF SUCH CONTRACT IS AGREED TO ON OR AFTER THE EFFECTIVE

UNCLASSIFIED

UNCLASSIFIED

PAGE 02 STATE 084726

DATE OF THIS SECTION, SHALL BE CONSIDERED TO BE AN

EMPLOYEE OF AN AGENCY."

3. THE OMB GUIDELINES, WHICH WERE CIRCULATED TO POSTS UNDER A-4872 ON JULY 17, 1975, ADVISE THAT A SYSTEM OPERATED UNDER A CONTRACT WHICH IS DESIGNED TO ACCOMPLISH AN AGENCY FUNCTION IS, IN EFFECT, DEEMED TO BE MAINTAINED BY THE AGENCY, AND THAT THE CONTRACT MUST INCLUDE PROVISIONS CONSISTENT WITH THE PRIVACY ACT. IF CONTRACT WERE ENTERED INTO IN U.S., IT WOULD BE STATED IN THE CONTRACT THAT CONTRACTORS AND ANY EMPLOYEES OF THOSE CONTRACTORS MAY BE SUBJECT TO CRIMINAL PENALTIES FOR DISCLOSING RECORDS THE DISCLOSURE OF WHICH IS PROHIBITED BY THE ACT.

4. HOWEVER, AS JURISDICTION TO BRING CRIMINAL CHARGES IS DOUBTFUL IN THIS CASE, AND SINCE, EVEN IF JURISDICTION WAS SOMEHOW ESTABLISHED, THERE IS NO WAY OF RETURNING ANY FOREIGN CONTRACTOR TO U.S. FOR TRIAL, A CONTRACT PROVISION RECITING THE CRIMINAL PENALTIES IS UNENFORCEABLE AND VIRTUALLY MEANINGLESS. IT WOULD APPEAR, HOWEVER, THAT POST COULD STIPULATE IN CONTRACT THAT CONTRACTOR MUST NOT FURTHER DISSEMINATE PERSONAL INFORMATION PROVIDED TO HIM AND MUST RETURN TO EMBASSY ALL DATA FURNISHED HIM AT COMPLETION OF PROJECT. IN OTHER WORDS, IF POST DOES CONTRACT TO A LOCAL FIRM, POST WOULD BE RESPONSIBLE FOR MAKING CERTAIN THAT THE INFORMATION WHICH IS DISCLOSED TO THE CONTRACTORS IS PROTECTED BY THE CONTRACTORS CONSISTENT WITH THE PROVISIONS OF THE PRIVACY ACT.

5. IF PERSONAL INFORMATION FROM THE DEPARTMENT OR POST SYSTEM OF RECORDS IS DISCLOSED TO ANOTHER AGENCY OR TO AN INDIVIDUAL, POST SHOULD BE AWARE OF THE PRIVACY ACT REQUIREMENT IN 552A SUBSECTION (C) OF KEEPING AN ACCURATE ACCOUNTING OF THE DATE, NATURE, AND PURPOSE OF EACH DISCLOSURE MADE TO ANOTHER AGENCY AS WELL AS THE NAME AND ADDRESS OF THE PERSON OR AGENCY TO WHOM THE DISCLOSURE WAS MADE.

UNCLASSIFIED

UNCLASSIFIED

PAGE 03 STATE 084726

6. IN ADDITION, 552A (C) (2) REQUIRES THAT THE ACCOUNTING BE RETAINED FOR AT LEAST FIVE YEARS OR THE LIFE OF THE RECORD, WHICHEVER IS LONGER, AFTER THE DISCLOSURE FOR WHICH ACCOUNTING IS MADE.

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